Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request of the)
United States Telephone Association)
for Rulemaking)

PETITION FOR RULEMAKING OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association ("USTA"), pursuant to § 1.401 of the Commission's rules, 47 C.F.R. § 1.401, hereby requests that the Commission amend Part 32 of its rules to allow carriers to record revenues from all nonregulated activities as nonregulated operating revenue pursuant to § 32.5280, notwithstanding an apparent limitation contained in §§ 32.23(c) and 32.5280(a). As the principal trade association of the local exchange carrier (LEC) industry, USTA comprises approximately 1,200 incumbent carriers, which together provide over 95 percent of the access lines offered by incumbent LECs in the United States.

I. INTRODUCTION

Seventeen incumbent LECs recently filed revisions to their cost allocation manuals ("CAMs") in conjunction with the deregulation of their payphone operations. Upon review of these revisions, the Commission directed all carriers required to file CAMs to record revenues from nonregulated payphone services as Public Telephone Revenue under § 32.5010 of the Commission's rules ("Account 5010")[1] rather than as Nonregulated Operating Revenue under § 32.5280 ("Account 5280"). As a result of this direction, which is the subject of a petition for expedited waiver filed by USTA,[2] incumbent LECs will be required to separately identify revenues from a particular nonregulated activity notwithstanding the fact that such a practice would provide competitors with an extremely valuable and unwarranted competitive advantage.

As currently written, Part 32 of the Commission's rules appear to require that whenever a regulated service is deregulated, revenues from the newly-deregulated service must be recorded in the preexisting regulated account rather than in Account 5280—the account

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[1] *In the Matter of Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, Cost Allocation Manual Revisions of: Aliant Communications Co. (AAD 97-9), ALLTEL Telephone Systems (AAD 97-3), Ameritech Operating Cos. (AAD 96-119 and 97-4), The Bell Atlantic Telephone Companies (AAD 97-5 and 97-31), BellSouth Corporation (AAD 96-129), Cincinnati Bell Telephone Co. (AAD 96-83, 96-118 and 97-6), Citizens Telephone Co. (AAD 97-7), GTE Telephone Operating Cos. (AAD 97-8), Nevada Bell Telephone Co. (AAD 96-92 and 97-10), NYNEX Telephone Companies (AAD 96-84 , 97-11, and 97-32), Pacific Bell Telephone Co. (AAD 96-91 and 97-12), Puerto Rico Telephone Co. (AAD 96-85 and 97-13), Rochester Telephone Corp. (AAD 97-14), Southern New England Telephone Co. (AAD 97-15), Southwestern Bell Telephone Co. (AAD 96-86, 97-16, and 97-42), United and Central Telephone Companies (AAD 96-87 and 97-17), U S WEST, INC. (AAD 97-18),* Memorandum Opinion and Order, DA 97-1244 (rel. Jun. 13, 1997) *(Order)* at para. 17.

[2] *See* Petition for Expedited Waiver of the United States Telephone Association, *In the Matter of the Request of the United States Telephone Association for Waiver of Part 32 of the Commission's Rules* (filed Aug. xx, 1997).

designated for nonregulated operating revenue. USTA respectfully submits that this outcome was never intended and that Part 32 of the Commission's rules should be amended to preclude it.

II. DISCUSSION

Account 5280 was created for the purpose of recording nonregulated operating revenue from any source, and the Commission has specifically stated that it wishes to avoid spreading nonregulated revenue over numerous accounts. As noted by Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (the SBC companies) in their recent Petition for Reconsideration, the Commission appropriately determined that there is "no regulatory need for service-specific revenue data for nonregulated activities. Our regulatory purposes are satisfied by using a single account for this purpose."[3] The Commission affirmed this policy when it required LECs to treat enhanced local services—such as voicemail—as nonregulated and provided that carriers record all nonregulated revenues for these services in Account 5280, not Account 5001, where they were recorded prior to the treatment of enhanced local services as nonregulated. The policy was also affirmed, as noted by the SBC companies in the same petition, in the case of customer premises revenue, where the Commission required LECs to

[3] Petition for Reconsideration of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, *In the Matters of Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, Cost Allocation Manual Revisions of Nevada Bell (AAD 96-92 and 97-10), Pacific Bell (AAD 96-91 and 97-12), Southwestern Bell Telephone Company (AAD 96-98 and 97-42)* (filed Jul. 14, 1997) at 2 (citing 3 FCC Rcd. 6702-3 (1988)).

move nonregulated customer premises revenue from Account 5050 to Account 5280.[4] Notwithstanding this policy, Part 32 of the Commission's rules contain a provision which can be construed as requiring that revenues from nonregulated activities be recorded in preexisting regulated accounts.

Section 32.23(c) of the Commission's rules provides the specific accounting instructions to be followed by carriers when a nonregulated activity involves the common or joint use of assets and services in the provision of both regulated and nonregulated products and services. Specifically, § 32.23(c) states:

> "...Nonregulated revenue items *not provided for elsewhere in this system of accounts and* (emphasis added) notpqualifying for incidental treatment as provided in section 32.4999(1), shall be recorded in separate subsidiary record categories of Account 5280, Nonregulated operating revenue..."

Section 32.5280(a) of the Commission's rules states:

> "This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets or resources in the provision of regulated and nonregulated products or services, *which are not provided for*

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[4] *Id.*, at 3-5.

elsewhere in this system of accounts (emphasis added)."

USTA hereby proposes to strike the language "not provided for elsewhere in this system of account,s" which appears to require that whenever a regulated service is deregulated, revenues from the newly-deregulated service must be recorded in the preexisting regulated account rather than in Account 5280. This is because there will always be a preexisting regulated account; thus, the underlying service—notwithstanding the fact it has been deregulated—will always be provided for elsewhere in the Commission's system of accounts. However, in the order adopting § 32.5280 (*Further Reconsideration Order,* CC Docket No. 86-111), the Commission insisted that carriers use a single account for their joint and common nonregulated activities.[5] Thus, recording nonregulated activity revenue anywhere other than in Account 5280 is inconsistent with the rationale of the *Further Reconsideration Order.* While § 32.5280 appears to require use of multiple nonregulated revenue accounts, the order adopting § 32.5280 expressly rejected a proposal that "nonregulated revenues should be spread among various revenue accounts ...".[6] Therefore, the Commission never intended that § 32.5280 should be construed to allow or require nonregulated from joint and common activities to be recorded anywhere other than Account 5280. Sections 32.5280 and 32.23 should be amended so as to be consistent with this original

[5] 3 FCC Rcd. 6702-3 (1988) at paras. 12, 13. Of course, the nonregulated activities that are the subject of § 32.5280 are those which involve joint and common assets and resources. If a nonregulated activity is accounted for on a separate set of books, then the revenue is provided for elsewhere in Part 32, *i.e.* in Account 7990.

[6] *Id.*, at para. 13.

intent. In addition, § 32.5010 (Public Telephone Revenue) should be eliminated in its entirety. Account 5010 is no longer necessary as a result of the deregulation of payphone services as well as the changes USTA is proposing herein with respect to §§ 32.23(c) and 32.5280. (The specific rule changes sought by USTA in this petition are illustrated in section III, below.)

Aside from the Commission's original intent in creating Account 5280, the use of a regulated account for the recording of revenues from nonregulated activities would place the ILECs at a competitive disadvantage since the only revenue it would contain would be product-specific nonregulated revenue. Regulated accounts appear on publicly-filed ARMIS reports. Thus, competitors who desire but have no need, would easily obtain this information. In order to protect this competitively-sensitive information, ILECs would be forced to withhold certain regulated account data as well as total revenue data and other information which would allow the calculation of the particular regulated account amount. Such an outcome would deprive the public of currently available revenue and net income data, and would also result in duplication of reporting and additional cost to produce both confidential and public versions of the ARMIS reports. Since Account 5280 is a single, catch-all account, containing revenues from multiple activities, it avoids the disclosure of the precise amount of revenue from any particular nonregulated activity.

The use of a regulated account for nonregulated payphone revenue would also create an accounting asymmetry between the revenues recorded for payphone service and the reduction of nonregulated revenues required to recognize the cost of the Public Access Line. Section

32.5280(b) of the Commission's rules require that Account 5280 "be debited and regulated revenue accounts shall be credited at tariffed rates when tariffed services are provided to nonregulated activities that are accounted for as prescribed in § 32.23(c)." The Commission's current directive for accounting for nonregulated payphone revenue is to use Account 5010, not Account 5280. The debit recorded in Account 5280 for use of the regulated network by the nonregulated payphone operations is not appropriately matched with the nonregulated activity giving rise to that debit. Although the Commission achieves its objective of not overstating total operating revenues, Account 5280 will be misleadingly understated. It is conceivable that the debits to Account 5280 will be so large as to completely eliminate all other nonregulated service revenues in Account 5280, providing no useful information whatsoever for that account. The use of Account 5280 for booking revenues and debits avoids this result.

Therefore, rather than require the ILECs to record nonregulated revenues in preexisting regulated accounts, USTA respectfully urges the Commission to amend its Part 32 rules to make it clear that carriers shall record revenues from all nonregulated activities in Account 5280. Since Account 5280 is not product-specific, use of this account for the purpose of recording revenues from nonregulated services would not result in the dissemination of competitively-sensitive information or force carriers to undertake duplicative and costly reporting measures or result in accounting anomalies. Furthermore, this result would be consistent with the original intent of Account 5280 as expressed in the *Further Reconsideration Order* in CC Docket No. 86-111.

III. SPECIFIC RULE CHANGES SOUGHT BY USTA IN THIS PETITION

USTA respectfully requests that the Commission amend its rules by striking the italicized portions of §§ 32.23(c), 32.5010 and 32.5280(a), as indicated below:

"**§ 32.23 Nonregulated activities.**

* * *

(c) ...Nonregulated revenue items ~~*not provided for elsewhere in this system of accounts and*~~ not qualifying for incidental treatment as provided in section 32.4999(1), shall be recorded in separate subsidiary record categories of Account 5280, Nonregulated operating revenue..."

~~***"§ 32.5010 Public Telephone Revenue.***~~

~~*This account shall include message revenue (e.g., coin paid) and other revenue derived from public and semi-public telephone services provided within the basic service area.*~~

"**§ 32.5280 Nonregulated operating revenue.**

(a) This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets or resources in the provision of regulated and nonregulated products or services~~*, which are not provided for elsewhere in this system of accounts*~~."

IV. CONCLUSION

For the reasons stated above, USTA respectfully urges the Commission to amend its Part 32 rules, as herein proposed, to clarify that Account 5280 should be used for the recording of revenue from all nonregulated carrier services, including nonregulated payphone operations as well as services which may be deregulated in the future.

Respectfully submitted,

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